1. (canceled).

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2. (currently amended) The method as described in Claim [[1]] 4 wherein the test probe is a ping.

3. (canceled).

4. (currently amended) ~~The method as described in Claim 3~~ A method of predicting a file download time, comprising:

periodically initiating a test probe from a server to a given point in a network in lieu of performing a file download;

collecting network performance data generated from the test probes, wherein the network performance data is latency;

computing an exponentially time-weighted average of the network performance data; and

using the exponentially time-weighted average of the network performance data to generate a value predictive of the file download time, wherein the time-weighted average is computed as:

$$AverageLatency = \sum_{i=0}^{\infty} lat \times e^{-t_i / C},$$

wherein lat is an i^{th} latency measurement made at a time t_i and C is a time constant.

5. (previously presented) The method as described in Claim 4 wherein the value is equal to the following function:

average latency + {[max ([100] base constant, average latency)]*(penalty factor)}, where the penalty factor is a given packet loss function, and max is a function that selects either the base constant or the average latency, whichever is greater.

6. (currently amended) The method as described in Claim ~~1 wherein the network performance data is packet-loss~~ 7 wherein the test probe is a ping.

7. (currently amended) ~~The method as described in Claim 6~~ A method of predicting a file download time, comprising:

periodically initiating a test probe from a server to a given point in a network in lieu of performing a file download;

collecting network performance data generated from the test probes, wherein the network performance data is packet loss;

computing an exponentially time-weighted average of the network performance data; and

using the exponentially time-weighted average of the network performance data to generate a value predictive of the file download time, wherein the time-weighted average is computed as:

$$AverageLoss = \sum_{i=0}^{\infty} loss \times e^{-t_i / C},$$

wherein *loss* is an i^{th} loss measurement made at a time t_i and C is a time constant.

8. (currently amended) A method of predicting a file download time, comprising:

periodically initiating a test probe from a server to a given point in a network in lieu of performing a file download and measuring the file download time directly;

collecting latency and packet loss data generated from the test probes;

using the data to compute an exponentially time-weighted average of latency and a time-weighted average of loss as follows;

$$AverageLatency = \sum_{i=0}^{\infty} lat \times e^{-t_i/C}$$

$$AverageLoss = \sum_{i=0}^{\infty} loss \times e^{-t_i/C}$$

wherein *lat* is an i^{th} latency measurement made at a time t_i, *loss* is an i^{th} loss measurement made at the time t_i, and C is a time constant[[.]];

and;

generating a score predictive of the file download time, wherein the score is substantially equal to:

average latency + {[max (base constant, average latency)]*(penalty factor)},

where the penalty factor is a function of the time-weighted average of loss and max is a function that selects either the base constant or the average latency, whichever is greater.

9. (original) The method as described in Claim 8 wherein the penalty factor is modified according to a loss percentage.

10. (currently amended) ~~A method of predicting a file download time, comprising:~~

~~periodically initiating a test probe from a server to a given point in a network in lieu of performing a file download and measuring the file download time directly;~~

~~collecting latency and packet loss data generated from the test probes;~~

~~using the data to compute an exponentially time weighted average of latency and a time weighted average of loss; and~~

~~generating a value indicative of the file download time,~~ The method as described in Claim 8, wherein the ~~value~~ score is a function of the time-weighted average of latency modified by a the penalty factor that is a function of the time-weighted average of loss.